

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION**

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

V.

TRADEMASTERS, USA, LLC and MIRKO
SCHACKE, an individual,

Defendants.

Civil Action No. 2:16-cv-01938-GMN-NJK

**[REDACTED] ORDER GRANTING
PLAINTIFF CFTC'S MOTION FOR
PRELIMINARY INJUNCTION AND
OTHER EQUITABLE RELIEF**

On August 15, 2016, Plaintiff, United States Commodity Futures Trading Commission (“Commission” or “CFTC”), filed a Complaint against Defendants TradeMasters, USA, LLC (“TradeMasters”) and Mirko Schacke (“Schacke”) (collectively “Defendants”), seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2012), and Commission Regulations, 17 C.F.R. §§ 1 *et seq.* (2015). This Court entered an *ex parte* Statutory Restraining Order (“SRO”) prohibiting the destruction of books, records, or other documents. (ECF No. 7). Service of the SRO was properly made on the Defendants on August 24, 2016.

I. FINDINGS BY THE COURT

This matter comes before this Court on the Motion for Preliminary Injunction filed by the CFTC. (ECF No. 5). The Court having considered the pleadings, declarations, exhibits, and the incorporated memoranda of law filed in support of the CFTC's Motion, the arguments and testimony presented by the CFTC and Defendant Schacke who appeared at the hearing on the Motion for Preliminary Injunction, including the testimony of Darin Goodrum, Joseph Patrick and Mirko Schacke, and the Court being fully advised in the premises,

THE COURT FINDS:

1. This Court has jurisdiction over the subject matter of this action and Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek

1 injunctive relief against any person whenever it shall appear that such person has engaged, is
2 engaging or is about to engage in any act or practice constituting a violation of any provision of
3 the Act or any rule, regulation, or order thereunder.

4 2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act,
5 7 U.S.C. § 13a-1(e), in that Defendants reside in this District and the acts and practices in
6 violation of the Act have occurred within this District.

7 3. The CFTC has alleged in its Complaint and has now presented evidence that,
8 from as early as June 2013 through the present, the Defendants Schacke and TradeMasters
9 fraudulently solicited and accepted \$163,626 from 38 public customers who purchased
10 automated trading software that they sold under the TradeMasters name. The CFTC further
11 alleged in its Complaint and has now offered evidence that the Defendants made numerous
12 misrepresentations about the past trading results of their trading system to these public customers
13 and used false and misleading customer testimonials to solicit investors to buy their software.
14 Further, the CFTC alleged in its Complaint and has now offered evidence that the Defendants
15 exercised discretionary trading authority over at least two customer trading accounts without
16 appropriate registrations with the Commission. Finally, the CFTC alleged in its Complaint and
17 has now offered evidence that the Defendants failed to include required disclosures in connection
18 with their testimonials.

19 4. It appears to the satisfaction of the Court that there is good cause to believe that
20 Defendants have engaged in, are engaging in, or are likely to engage in acts and practices that
21 violate Sections 4b(a)(1)(A) and (C), 4m(1), 4k(3), 4o and 6(c)(1), of the Act, 7 U.S.C.
22 §§ 6b(a)(1)(A) and (C), 6m(1), 6k(3), 6o and 9(1) (2012), and Regulations 180.1(1) and 4.41,
23 17 C.F.R. §§ 180.1 and 4.41 (2015). Furthermore, there is a reasonable likelihood that the CFTC
24 will prevail on the merits of this action.

1 5. Consequently, the Court is satisfied that this is a proper case for granting a
2 preliminary injunction to preserve the *status quo*, remove the danger of further violations of the
3 Act, protect investors and prospective investors from further loss and damage and enable the
4 CFTC to fulfill its statutory duties.

5 For the purposes of this Order, the following definitions apply:

6 6. The term “document” is synonymous in meaning and equal in scope to the usage
7 of the term in Federal Rule of Civil Procedure 34(a), and includes, writings, drawings, graphs,
8 charts, photographs, audio and video recordings, computer records, and other data compilations
9 from which information can be obtained and translated, if necessary, through detection devices
10 into reasonably usable form. A draft or non-identical copy is a separate document within the
11 meaning of the term.
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13 7. The term “Defendants” refers to Mirko Schacke, individually and TradeMasters
14 USA, LLC, and any person insofar as he or she is acting in the capacity of an officer, agent,
15 servant, employee, or attorney of Defendants and any person who receives actual notice of this
16 Order by personal service or otherwise insofar as he or she is acting in concert or participation
17 with Defendants. “Defendants” also refers to any d/b/a, successor, affiliate, subsidiary, or other
18 entity owned, controlled, managed, or held by, on behalf of, or for the benefit of Mirko Schacke
19 or TradeMasters.
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21 8. Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), defines a Commodity
22 Trading Advisor (“CTA”), in relevant part, as any person who, for compensation or profit,
23 engages in the business of advising others, either directly or through publications, writings, or
24 electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity
25 for future delivery made or to be made on or subject to the rules of a contract market.
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1 9. An associated person (“AP”) of a CTA is defined, in relevant part, as any natural
 2 person associated with a CTA “as a partner, officer, employee, consultant, or agent (or any
 3 natural person occupying a similar status or performing similar functions), in any capacity which
 4 involves (i) the solicitation of a client’s or prospective client’s discretionary account, or (ii) the
 5 supervision of any person or persons so engaged.” 17 C.F.R. § 1.3(aa)(3).
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7 10. This Court finds that the Plaintiff has made a *prima facie* case that violations of
 8 the Commodity Exchange Act and Regulations promulgated thereunder have occurred and will
 9 continue to occur, as follows:

10 11. As alleged in Count One of the Complaint, the Court finds that the Plaintiff has
 11 made a showing of a reasonable likelihood of success on the merits that the Defendants have
 12 knowingly and recklessly made material misrepresentations or attempted to deceive members of
 13 the public and that they did so with scienter, including by misrepresenting that:
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- 15 a. the TradeMasters software was fully automated and could result in profitable
 16 trading for customers without “coaching” from Schacke;
- 17 b. hypothetical trading profits were actual trading profits;
- 18 c. that TradeMasters’ “coaches” have more than 2 decades of active day trading
 19 experience when Schacke was the only “coach” and had no futures trading
 20 experience prior to marketing the TradeMasters software in June 2013;
- 21 d. a customer gained more than 500% in 2014;
- 22 e. a customer gained more than 40% “in only 10 weeks;”
- 23 f. “most users manage to generate a monthly income of 5 to \$10,000;”
- 24 g. some customers “quickly reached [income of] 15 to \$30,000 each and every
 25 month;
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- 27 h. a 300% return in just three months was earned by a “real customer;”
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i. a video testimonial came from a purported “real customer” when the testimonial was from a paid actor and actually reported selected results from Schacke’s proprietary account; and

j. reported profits were earned with new software Schacke began marketing at the end of 2014 when they were actually earned with the old TradeMasters software no longer made available to prospective customers;

and that they therefore violated Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 4b(a)(1)(A) and (C) (2012).

12. As alleged in Count Two of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that the Defendants have traded on behalf of public customers and that they have held themselves out as CTAs in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

13. As alleged in Count Three of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that Defendant Schacke has solicited at least two customers’ discretionary trading accounts without the benefit of registration with the Commission as an AP of TradeMasters, in violation of Section 4k(3) of the Act, 7 U.S.C. § 6k(3) (2012).

14. As alleged in Count Four of the Complaint, the Court finds that the Plaintiff has made a showing of a reasonable likelihood of success on the merits that Defendant TradeMasters, while acting as a CTA, and Defendant Schacke, while acting as an AP of a CTA, have intentionally, by use of mail and other instrumentalities of interstate commerce, including email and its own website, engaged in conduct that operated as a fraud or deceit upon public customers, in violation of Section 4o of the Act, 7 U.S.C. § 6o (2012).

1 15. As alleged in Count Five of the Complaint, the Court finds that the Plaintiff has
2 made a showing of a reasonable likelihood of success on the merits that the Defendants have
3 intentionally used manipulative or deceptive devices or contrivances in connection with any
4 contract of sale of any commodity in interstate commerce, in violation of Section 6(c)(1) of the
5 Act, 7 U.S.C. § 9(1)(2012) and Regulation 180.1(a), 17 C.F.R. § 180.1(2015).

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7 16. As alleged in Count Six of the Complaint, the Court finds that the Plaintiff has
8 made a showing of a reasonable likelihood of success on the merits that the Defendants have
9 failed to include in connection with their references to testimonials used in solicitations of public
10 customers the prominent disclosure of the following: (a) that the testimonial many not be
11 representative of the experience of other clients; and (b) that the testimonial is not guarantee of
12 future performance or success, in violation of Regulation 4.41(a)(3), 17 C.F.R. § 4.41(a)(3)
13 (2015).

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15 17. The Court finds that the Plaintiff has made a showing of a reasonable likelihood
16 of success on the merits that Defendant Schacke controlled TradeMasters, as he was the sole
17 owner and manager of TradeMasters and managed the TradeMasters' website and exercised
18 control and a lack of good faith and knowing inducement of the various acts of TradeMasters,
19 including his creation of the material misrepresentation on the TradeMasters' website, and
20 Schacke therefore is liable for TradeMasters' violations of the Act as a controlling person under
21 Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

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23 18. The Court finds that the Plaintiff has made a showing of a reasonable likelihood
24 of success on the merits that Defendant Schacke's actions were committed within the scope of
25 his employment with and operation of TradeMasters as he was the owner and manager of
26 TradeMasters, and therefore, TradeMasters is liable for Schacke's individual acts constituting
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violations of the Act and Regulations, under Section 2(a)(1)(B) of the Act, 7 U.S.C.

§ 2(a)(1)(B)(2012).

ORDER OF PRELIMINARY INJUNCTION AND OTHER EQUITABLE RELIEF

IT IS HEREBY ORDERED that:

19. Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, employees, successors, assigns, or attorneys, and all persons insofar as they are acting in concert or participation with Defendants who receive actual notice of this order by personal service or otherwise, shall be prohibited and restrained, until further order of the Court, from directly or indirectly violating Sections 4b(a)(1)(A) and (C), 4m(1), 4k(3), 4o and 6(c)(1), of the Act, 7 U.S.C. §§ 6b(a)(1)(A) and (C), 6m(1), 6k(3), 6o and 9(1) (2012), and Regulations 180.1(1) and 4.41, 17 C.F.R. §§ 180.1 and 4.41(2015).

20. Defendants are further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012), including, but not limited to, trading for themselves or others;
- b. Entering into any transactions involving "commodity interests" (as that term is defined in regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2015) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except

as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015);

- g. Acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015);

CESSATION OF COMMODITY TRADING EDUCATION ACTIVITIES

21. Defendants are further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly educating or advising any other person or entity about the suitability of engaging in any transactions involving commodity interests, including, but not limited to, trading through the use of any computer software program.

DISABLEMENT OF WEBSITE AND OTHER INTERNET DEVICES

22. Within ten days after entry of this Order, Defendants shall do whatever is necessary to insure that all internet websites used by them to advertise, market, promote or offer for sale any transactions involving commodity interests and related services be deleted and made inaccessible to the public, including, but not limited to, any automated commodity futures trading software and the website identified as: www.trademastersusa.com.

23. Within ten days after entry of this Order, Defendants shall do whatever is necessary to insure that the registration for all domain names for all internet websites used by them to advertise, market, promote or offer for sale any transactions involving commodity interests and related services be withdrawn, including, but not limited to, the website identified as: www.trademastersusa.com.

24. Within ten days after entry of this Order, Defendants shall do whatever is necessary to insure that all Facebook Pages used by them to advertise, market, promote or offer for sale any transactions involving commodity interests and related services be deleted and made inaccessible to the public, including, but not limited to, the "TradeMasters USA" Facebook page.

1 25. Within ten days after entry of this Order, Defendants shall do whatever is
2 necessary to insure that all YouTube videos used by them to advertise, market, promote or offer
3 for sale any transactions involving commodity interests and related services, including, but not
4 limited to, any automated commodity futures trading software, be deleted and made inaccessible
5 to the public.
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7 **PROHIBITION ON DESTRUCTION OF, AND ACCESS TO, BOOKS AND RECORDS**

8 **IT IS FURTHER ORDERED THAT:**

9 26. Defendants and all persons or entities who receive notice of this Order by
10 personal service or otherwise, including electronic mail, facsimile, United Parcel Service, or
11 Federal Express, are restrained and enjoined from directly or indirectly destroying, mutilating,
12 erasing, altering, concealing, or disposing of, in any manner, directly or indirectly, any
13 documents that relate to the business operations or practices, or the business or personal finances,
14 of Defendants.
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16 27. Defendants and all persons insofar as they are acting in the capacity of
17 Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons
18 insofar as they are acting in active concert or participation with Defendants who receive actual
19 notice of this Order by personal service or otherwise, including email, facsimile, and UPS or
20 other commercial overnight service, are enjoined and prohibited from directly or indirectly
21 refusing to permit authorized representatives of the Commission to inspect, when and as
22 requested, any documents as defined herein, including any books and records, correspondence,
23 brochures, manuals, electronically stored data, tape records, computers or other property of
24 Defendants, wherever located, including, but not limited to, all such records concerning
25 Defendants' business operations or practices and Defendants' business or personal finances.
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BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED THAT:

28. Because Plaintiff CFTC is an agency of the United States of America and has made a proper showing under Section 6c(b) of the CEA, 7 U.S.C. § 13a-1(b) (2012), this restraining order is granted without bond.

SERVICE OF ORDER

IT IS FURTHER ORDERED THAT:

29. Copies of this Order may be served by any means, including personal service, electronic mail, facsimile transmission, United Parcel Service, Federal Express, other commercial overnight service, or pursuant to Rule 5 of the Federal Rules of Civil Procedure and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, upon any entity or person that may have possession, custody, or control of any documents of Defendants, or that may be subject to any provision of this Order. Joseph Patrick and other employees of the Commission are hereby specially appointed to serve process, including this Order and all other papers in this cause.

SERVICE ON THE COMMISSION

IT IS FURTHER ORDERED THAT:

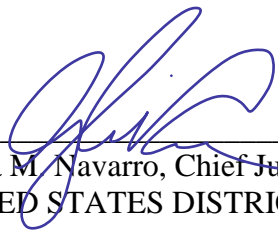
30. Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the CFTC by delivering a copy to Susan B. Padove, Senior Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 525 W. Monroe St., Suite 1100, Chicago, Illinois 60661 and/or by filing such pleadings or other materials electronically with the Court pursuant to the Court's requirements.

COURT MAINTAINS JURISDICTION

IT IS FURTHER ORDERED THAT:

31. This Order shall remain in effect until further order of the Court and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action. This Order supersedes the statutory restraining order entered by the Court on August 15, 2016.

IT IS SO ORDERED at Las Vegas, Nevada on this 22 day of September, 2016.



Gloria M. Navarro, Chief Judge
UNITED STATES DISTRICT JUDGE